

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RLI INSURANCE COMPANY,

Plaintiff,

-vs-

CASE NO.: 07 CIV 9546 (JBD) (HP)

Civil Action

JDJ MARINE, INC.,

Defendants.

-----X

**AFFIRMATION IN FURTHER  
SUPPORT OF APPLICATION**

ALAN R. OSTROWITZ, an attorney at law duly licensed to practice before the United States District Court for the Southern District of New York, a Member of the Firm of OSTROWITZ & OSTROWITZ, ESQS., attorneys for COMMERCE BANK, N.A., respectfully states and alleges the following pursuant to the penalties of perjury:

1. That, upon receipt of the plaintiff's sur-reply, the undersigned checked PACER on January 14, 2008 and ascertained that, indeed, the plaintiff's Amended Complaint was filed effective January 2, 2008. However, for some reason, the subject Amended Complaint is filed as Docket entry "16", and appears behind the undersigned's Reply Certification, filed at Docket entry "14" on January 8, 2008 and the accompanying Certificate of Service which was also filed on January 8,

2008. Accordingly, it does appear that the Complaint was presented to the Court for filing on January 2, 2008 although the same was not actually docketed until approximately January 8, 2008 or shortly thereafter, subsequent to the filing of the undersigned's Reply Affirmation.

2. That, the undersigned files the within Affirmation to clarify the statements made in the undersigned's prior Affirmation which stated at the time that the Amended Complaint had not been filed. At the time that the undersigned checked PACER the subject Amended Complaint did not show up. A review of the Docket entries obviously shows the reason for this. A true copy of the Docket sheet is annexed hereto, made a part hereof, and incorporated herein by reference.

Dated: January 15, 2008

---

/s/ ALAN R. OSTROWITZ

ECF

**U.S. District Court  
United States District Court for the Southern District of New York (Foley Square)  
CIVIL DOCKET FOR CASE #: 1:07-cv-09546-GBD**

RLI Insurance Company v. JDJ Marine, Inc.  
Assigned to: Judge George B. Daniels  
Cause: 28:2201 Declaratory Judgement (Insurance)

Date Filed: 10/25/2007  
Jury Demand: None  
Nature of Suit: 120 Contract: Marine  
Jurisdiction: Federal Question

**Plaintiff****RLI Insurance Company**

represented by **John Anthony Vincent Nicoletti**  
Nicoletti Hornig & Sweeney  
88 Pine Street  
7th Floor  
New York, NY 10005  
(212) 220-3837  
Fax: (212) 220-3780  
Email: [jnicoletti@nicolettihornig.com](mailto:jnicoletti@nicolettihornig.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Guerric S.D.L. Russell**  
Nicoletti Hornig & Sweeney  
88 Pine Street  
7th Floor  
New York, NY 10005  
212-220-3826  
Fax: 212-220-3780  
Email: [grussell@nhcslaw.com](mailto:grussell@nhcslaw.com)  
**ATTORNEY TO BE NOTICED**

**Nooshin Namazi**  
Nicoletti Hornig & Sweeney  
88 Pine Street  
7th Floor  
New York, NY 10005  
(212)-220-3833  
Fax: (212)-220-3780  
Email: [nnamazi@nicolettihornig.com](mailto:nnamazi@nicolettihornig.com)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant****JDJ Marine, Inc.**

represented by **Richard M. Fricke**  
Fricke & Solomon P.C.  
622 Barlow Avenue  
Staten Island, NY 10312  
(718)-984-2626  
Fax: (718)-984-5820  
Email: [rfricke@metrolaw.com](mailto:rfricke@metrolaw.com)  
**ATTORNEY TO BE NOTICED**

**ADR Provider**

**Commerce Bank, N.A.**  
*intervenor*

represented by **Alan Robert Ostrowitz**  
 Ostrowitz & Ostrowitz, Esqs  
 225 Gordons Corner Rd., Suite 1j  
 Manalapan, NJ 07726  
 (732)-446-2800  
 Fax: (732)-446-5837  
 Email: ostrowlaw@gmail.com  
**ATTORNEY TO BE NOTICED**

**Intervenor**

**Commerce Bank, N.A.**

represented by **Alan Robert Ostrowitz**  
 (See above for address)  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
10/25/2007	<u>1</u>	COMPLAINT against JDJ Marine, Inc.. (Filing Fee \$ 350.00, Receipt Number 631148) Document filed by RLI Insurance Company.(pl) Additional attachment(s) added on 10/26/2007 (Becerra, Maribel). (Entered: 10/26/2007)
10/25/2007		SUMMONS ISSUED as to JDJ Marine, Inc.. (pl) (Entered: 10/26/2007)
10/25/2007		Magistrate Judge Henry B. Pitman is so designated. (pl) (Entered: 10/26/2007)
10/25/2007		Case Designated ECF. (pl) (Entered: 10/26/2007)
10/25/2007	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying RLI Corporation as Corporate Parent. Document filed by RLI Insurance Company.(pl) Additional attachment(s) added on 10/26/2007 (Becerra, Maribel). (Entered: 10/26/2007)
11/05/2007	<u>3</u>	INITIAL PRETRIAL CONFERENCE: Initial Conference set for 1/17/2008 at 09:30 AM in Courtroom 15D, 500 Pearl Street, New York, NY 10007 before Judge George B. Daniels. (Signed by Judge George B. Daniels on 10/29/07) (tro) (Entered: 11/05/2007)
12/07/2007	<u>4</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION to Intervene. Document filed by Commerce Bank, N.A. Return Date set for 1/10/2008 at 10:00 AM. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Supplement Memorandum of Law, # <u>3</u> Exhibit)(Ostrowitz, Alan) Modified on 12/10/2007 (KA). (Entered: 12/07/2007)
12/07/2007	<u>5</u>	AFFIDAVIT OF SERVICE of Notice of Motion, Affirmation, Memorandum of Law served on RLI Insurance Company on 12/7/2007. Service was made by mail. Document filed by Commerce Bank, N.A.. (Ostrowitz, Alan) (Entered: 12/07/2007)
12/10/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Alan Robert Ostrowitz to RE-FILE Document 4 MOTION to Intervene. ERROR(S): Filing Error of Attachments. Supporting Documents must be filed individually. Event codes located under Replies, Opposition and Supporting Documents. (KA) (Entered: 12/10/2007)
12/10/2007	<u>6</u>	MOTION to Intervene. Document filed by Commerce Bank, N.A.. Return Date set for 1/10/2008 at 10:00 AM.(Ostrowitz, Alan) (Entered: 12/10/2007)
12/10/2007	<u>7</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - MOTION to Intervene (Affirmation in Support of Motion). Document filed by Commerce Bank, N.A.. Return Date set for 1/10/2008 at 10:00 AM. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Ostrowitz, Alan) Modified on 12/10/2007 (KA). (Entered: 12/10/2007)
12/10/2007	<u>8</u>	MEMORANDUM OF LAW in Support re: <u>6</u> MOTION to Intervene.. Document filed by Commerce Bank, N.A.. (Ostrowitz, Alan) (Entered: 12/10/2007)
12/10/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Alan Robert Ostrowitz to RE-FILE Document 7 MOTION to Intervene (Affirmation in Support of Motion). Use the document type Affirmation in Support of Motion found under the document list Replies, Opposition and Supporting Documents. (KA) (Entered: 12/10/2007)

12/10/2007	<u>9</u>	AFFIRMATION of Alan R. Ostrowitz, Esq. in Support re: <u>6</u> MOTION to Intervene.. Document filed by Commerce Bank, N.A.. (Attachments: # <u>1</u> Exhibit (pages 1-40), # <u>2</u> Exhibit pages 41-81)(Ostrowitz, Alan) (Entered: 12/10/2007)
01/02/2008	<u>16</u>	AMENDED COMPLAINT amending <u>1</u> Complaint against JDJ Marine, Inc. Document filed by RLI Insurance Company. Related document: <u>1</u> Complaint filed by RLI Insurance Company. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(db) (Entered: 01/10/2008)
01/03/2008	<u>10</u>	FIRST RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying NO as Corporate Parent. Document filed by JDJ Marine, Inc..(Fricke, Richard) (Entered: 01/03/2008)
01/03/2008	<u>11</u>	ANSWER to Complaint. Document filed by JDJ Marine, Inc..(Fricke, Richard) (Entered: 01/03/2008)
01/04/2008	<u>12</u>	AFFIDAVIT of John A.V. Nicoletti in Opposition re: <u>6</u> MOTION to Intervene.. Document filed by RLI Insurance Company. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4)(Nicoletti, John) (Entered: 01/04/2008)
01/04/2008	<u>13</u>	MEMORANDUM OF LAW in Opposition re: <u>6</u> MOTION to Intervene.. Document filed by RLI Insurance Company. (Nicoletti, John) (Entered: 01/04/2008)
01/08/2008	<u>14</u>	REPLY AFFIRMATION of Alan R. Ostrowitz in Opposition re: <u>6</u> MOTION to Intervene.. Document filed by Commerce Bank, N.A.. (Attachments: # <u>1</u> Exhibit)(Ostrowitz, Alan) (Entered: 01/08/2008)
01/08/2008	<u>15</u>	CERTIFICATE OF SERVICE of Affirmation and Memorandum of Law served on RLI Insurance and JDJ Marine on January 8, 2008. Service was accepted by c/o attorneys of record. Service was made by mail. Document filed by Commerce Bank, N.A.. (Ostrowitz, Alan) (Entered: 01/08/2008)
01/10/2008	<u>17</u>	RULE 26(f) DISCOVERY PLAN REPORT.Document filed by RLI Insurance Company.(Nicoletti, John) (Entered: 01/10/2008)
01/11/2008	<u>18</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT - MOTION for Leave to File Sur-Reply Memorandum of Law in Opposition to Commerce Bank's Motion to Intervene(LETTER WITH ATTACHED SUR-REPLY MEMORANDUM OF LAW IN OPPOSITION). Document filed by RLI Insurance Company.(Nicoletti, John) Modified on 1/14/2008 (KA). (Entered: 01/11/2008)
01/11/2008	<u>19</u>	NOTICE OF APPEARANCE by Nooshin Namazi on behalf of RLI Insurance Company (Namazi, Nooshin) (Entered: 01/11/2008)
01/11/2008	<u>20</u>	NOTICE OF APPEARANCE by Gueric S.D.L. Russell on behalf of RLI Insurance Company (Russell, Gueric) (Entered: 01/11/2008)
01/11/2008	<u>21</u>	ANSWER to Amended Complaint. Document filed by JDJ Marine, Inc.. Related document: <u>16</u> Amended Complaint filed by RLI Insurance Company.(Fricke, Richard) (Entered: 01/11/2008)
01/14/2008		***NOTE TO ATTORNEY THAT THE ATTEMPTED FILING OF Document No. [John 18] HAS BEEN REJECTED. Note to Attorney Anthony Vincent Nicoletti : THE CLERK'S OFFICE DOES NOT ACCEPT LETTERS FOR FILING, either through ECF or otherwise, except where the judge has ordered that a particular letter be docketed. Letters may be sent directly to a judge. (KA) (Entered: 01/14/2008)

PACER Service Center			
Transaction Receipt			
01/14/2008 15:55:13			
PACER Login:	oo0018	Client Code:	
Description:	Docket Report	Search Criteria:	1:07-cv-09546-GBD
Billable Pages:	3	Cost:	0.24